

**ZONING ORDINANCE
FOR THE
TOWN OF NEWTON, NH**

SECTION I PREAMBLE

The purpose of this bylaw is to promote the health, safety, welfare and convenience of the inhabitants by dividing the town into Zones and regulating the use with a view to encouraging the most appropriate use of land in the town in accordance with provisions of Chapter 31 of the New Hampshire Revised Statutes and any amendments thereto.

SECTION II AMENDMENT

This ordinance may from time to time be changed by amendment, addition, or repeal by a Town Meeting in the manner provided by Chapter 31 of the New Hampshire Revised Statutes Annotated.

SECTION III VALIDITY

This Ordinance shall supersede any existing town ordinance with which it may be in conflict. If any section, clause, provision, portion, or phrase of this ordinance shall be held to be invalid or unconstitutional by any court of competent authority such holding shall not affect, impair or invalidate any other section or phrase of this ordinance.

SECTION IV ENFORCEMENT (Added March 1988)

The Selectmen or their authorized representative shall be responsible for enforcing the provisions of this ordinance.

SECTION V FINES AND PENALTIES (Added March 1988)

Any violation of this Ordinance is punishable by a civil fine of not more than \$100 for each day that such violation is found by the court to continue after conviction date or after the date on which the violator receives written notice from the municipality that he is in violation of the ordinance, whichever date is earlier. The provisions of RSA 676:17, II, III, and IV are incorporated as part of this section.

SECTION VI BOARD OF ADJUSTMENT

A Board of Adjustment established in accordance with Chapter 31 of the New Hampshire Revised Statutes Annotated shall exercise all the duties and functions granted to it according to Chapter 31.

SECTION VII ESTABLISHMENT OF ZONES (Amended March 1977, amended November 1986, amended March 2003, amended March 2011, amended March 2012)

The Town of Newton is hereby divided into zones as follows:

1. Residential A
2. Residential B
3. Residential C
4. Commercial
5. Village District
6. Light Industrial/Commercial

These zones are hereby defined as follows:

1. Residential A – Residential A zone shall be defined as all areas not specifically defined in other zones as indicated in Appendices A, B, C, D, and E of this ordinance.
2. Residential B – The area of the Residential B zone shall be defined as the lots indicated in Appendix B of this ordinance.
3. Residential C – The area of the Residential C zone shall be defined as the lots indicated in Appendix C of

- this ordinance.
4. Commercial – The area of the Commercial zone shall be defined as the lots indicated in Appendix D of this ordinance.
 5. Village District – The area of the Village District zone shall be defined as the lots indicated in Appendix A of this ordinance.
 6. Light Industrial/Commercial – The area of the Light Industrial/Commercial zone shall be defined as the lots indicated in Appendix E of this ordinance.

SECTION VIII PRELIMINARY SUBDIVISION REVIEW (Added March 2005)

Per RSA 674:35, I, as mandated by the State of N.H.: The Planning Board is authorized to require preliminary subdivision review. The subdivision regulations regarding the requirements of such review are to be prepared and adopted by the Planning Board.

SECTION IX PRELIMINARY SITE PLAN REVIEW (Added March 2012)

Per State of New Hampshire RSA 674:43, the Planning Board is authorized to require preliminary review of site plans and to review and approve or disapprove site plans for the development or change or expansion of use of tracts for nonresidential uses or for multi-family dwelling units. The site plan regulations regarding the requirements of such review are to be prepared and adopted by the Planning Board.

SECTION X GENERAL PROVISIONS

1. No junkyard or place for the storage of discarded machinery, vehicles, junk or other scrap materials shall be maintained in any zone. Violations of this ordinance shall be subject to fines and penalties as outlined in RSA 676:17. (Amended March 1986, amended March 1994, amended March 2008)
2. No owner or occupant of land in any zone shall permit fire debris or other ruins to be left but shall remove the same within two (2) years. (Amended March 2012)
3. Any uses that may be obnoxious or injurious by reason of the production or emission of odor, dust, smoke, refuse matter, fumes, noise, vibrations, or similar conditions, or that are dangerous to the comfort, peace, enjoyment, health or safety of the community or that contribute to its disturbance or annoyance are prohibited in any zone.
4. No occupant or owner of land shall have or shall cause to have on their property or permit more than one (1) motor vehicle which is not registered and inspected, unless such vehicle is stored in a legally permitted structure, is stored in a manner consistent with an approved site plan, or is stored in a manner consistent with a legal, non-conforming use. Per RSA 266:1, any vehicle registered shall be inspected not later than 10 days after the registration or transfer of ownership of said vehicle. This shall include vehicles or appurtenances no longer intended for legal use on the highways, or used parts or materials from which, taken together, include in bulk one or more vehicles. Violations of this ordinance shall be subject to fines and penalties as outlined in RSA 676:17. (Amended March 1994, amended March 2003, amended March 2008, amended March 2016)

Exemptions to this article shall be limited to those vehicles used regularly on the premises for day-to-day existence (i.e., farm vehicles) or unless a properly licensed person or persons or corporation for the purpose of selling the same. (Added March 1994)

Owners of vehicles not currently meeting the requirements of this ordinance shall have ninety (90) days from the date of adoption of this ordinance to be in compliance. (Added March 1994)

5. The Board of Selectmen may issue temporary trailer permits in Residential and/or Commercial Zones (not Industrial Zones), only if house is rendered uninhabitable for any reason. Total length of time for all permits shall not exceed nine months. The Board of Selectmen has the authority to revoke subject permit if reason or reasons for issuance have ceased. (Added March 1985)

6. No commercial excavation shall be permitted in any residential zone. Excavation shall be permitted where it is incidental to the lawful construction or alteration of a building or structure, parking lot, way, or driveway. (Added March 1988)
7. All building heights shall be measured according to Current State of New Hampshire Building Code. (Added March 1989, amended March 2007)
8. Church spires or towers of Public Buildings may exceed the height restriction by no more than 40%. (Added March 1989)
9. There shall be no burial of unearthed stumps, demolition or construction materials in any zone in the Town of Newton. (Added March 2001, amended March 2012)
10. With the exception of automotive fueling stations there shall be no storage of bulk fuels for commercial sale within the Town of Newton. (Added March 2003)
11. Any accessory structures as defined in the zoning ordinance over 1,200 square feet are required to receive Planning Board approval prior to issuance of a building permit. (Added March 2005)
12. Building Safety. (Added March 2007)
 - a. The State Building Codes are RSA 155A (International Building Code) and Saf-C 6000 (State Fire Code). These codes are the statewide minimum requirements, which shall serve as the building code for the Town of Newton.
 - b. The minimum frost protection measured from the bottom of the foundation footing to finished grade shall be four (4) feet.
 - c. Appendix G of the 2000 International Residential Code shall be the minimum requirements for all pool, spa, hot tub, and barrier fencing for those installations.
 - d. Appendix F of the 2000 International Residential Code shall be the minimum requirements for the provisions of radon systems.
 - e. All construction, demolition, or work covered by the scope and purpose of these codes that is performed without permits shall be subject to \$100 stop work order plus the permit fee. If the work is completed, then the \$100 shall be a non-compliance penalty, plus the fee.
 - f. Continued use of properties or structures that are not in compliance with the zoning ordinance and are not considered to be “grandfathered”, are subject to fines of \$30 per day per violation.

SECTION XI NON-CONFORMING LOTS, STRUCTURES, AND USES (Amended March 2000)

1. RECONSTRUCTION

Any non-conforming structure which is completely or substantially destroyed by casualty loss may be replaced with a similar structure which has the same building footprint dimensions and meets the setbacks of the previously existing structure. The structure may be rebuilt provided such construction is started within one year of the casualty loss and complete within two years of the casualty loss. The provisions of the Town of Newton Building Code, as amended, shall apply to any reconstruction.

2. EXPANSION OF NON-CONFORMING USES

Except as noted below, an expansion of a non-conforming use is prohibited except by variance by the Zoning Board of Appeals.

A variance is not required if the expansion is a natural expansion which does not change the nature of the use, does not make the property proportionately less adequate, and does not have a substantially different impact on the neighborhood.

3. EXPANSION OF NON-CONFORMING STRUCTURES

Non-conforming structures may be expanded in accordance with the terms of a special exception issued by the Zoning Board of Adjustment, which must find the following factors to exist before issuing such a special exception:

- a. The proposed expansion must intrude no further into any setback area than does the existing structure.
- b. The expansion must have no further adverse impact on the view, light and air of any abutter.
- c. The expansion must not cause property values to deteriorate.
- d. The expansion must not impede existing rights of access or egress.
- e. That portion of the proposed expansion, which will intrude into the setback, must, in no event, exceed the footprint square footage of that portion of the structure which presently intrudes into the setback, regardless of the number of applications made over time under this subsection.
- f. In the event the non-conforming structure contains a commercial use, there must be no adverse impact on access, traffic, parking, lighting or other safety or visibility features of the existing structure.
- g. A special exception under this subsection may be granted only as to expansions into the side, front, and rear setbacks, and is not available for expansions which violate height restrictions of this ordinance.

4. DISCONTINUANCE

In the event that a non-conforming use is voluntarily discontinued for a period of one year, such non-conforming use shall be deemed abandoned and shall not be able to resume without compliance with the zoning ordinance or, alternately, without a variance from the zoning board of adjustment. Voluntary abandonment shall be evidenced by either of the following:

- a. Discontinuance of the occupancy or non-conforming use for twelve consecutive months with no ongoing attempts to sell or lease the property for its non-conforming use or
- b. Failure to resume the non-conforming use within eighteen months, even though there may be ongoing efforts to sell or lease the property for its non-conforming use.

5. CONTINUANCE

All non-conforming structures and uses which predate the adoption or amendment of this ordinance may continue in their present use. These uses shall run with the land and may be transferred by sale or lease by present owner to future owners or lessees, subject to the other terms of this Ordinance which limit such non-conforming uses.

All new uses, changes of uses, expansion of uses or resumption of uses previously discontinued shall not be permitted until the property owner or authorized lessee has first made application to the Town of Newton Code Enforcement Officer for an administrative decision seeking a determination whether a permit is required for such new, change, expansion or resumption of the non-conforming use or non-conforming structure under the terms of this ordinance. If a permit or other application is required, such use may not proceed until such application has been made and processed as required by town regulations and ordinances.

SECTION XII HOME OCCUPATIONS AND HOME-BASED BUSINESSES (Added March 1995, amended March 2003, amended March 2007, Amended March 2012)

Pursuant to RSA 674:21, the Planning Board is hereby authorized to grant a Conditional Use Permit to allow for Home Based Businesses in accordance with the restrictions and requirements of this section.

PURPOSE

The purpose of allowing home occupations and home-based businesses is to enhance economic opportunities

for residents without significantly detracting from the quality of the neighborhoods.

The conduct of business in residential units may be permitted under the provisions of this section. It is the intent of this section to:

1. Ensure the compatibility of home occupations and home based businesses with the uses permitted in the Residential A and B Zones;
2. Maintain and preserve the character of residential neighborhoods;
3. Promote the efficient use of public services and facilities by assuring these services are provided to the residential population for which they were planned and constructed, rather than commercial use.

WHERE PERMITTED

- A) Home Occupation. One home occupation may be permitted in each residential unit in Residential A and B zones.
- B) Home-Based Business. One home-based business may be permitted in each single family residential unit, exclusive of duplexes, condominium units or elderly housing units, in Residential A and B zones, subject to the following:
 - 1) The home-based business is accessory to the residential use.
 - 2) There shall be no outdoor activity or use, including storage and parking of commercial vehicles or trailers exceeding 12,000 GVW, except for the provision of employee parking.
 - 3) The home-based business shall not be such that it requires regular or frequent service by heavy commercial trucks since this would adversely impact the character of the neighborhood.
 - 4) The home-based business shall be registered by conditional use permit and through the filing of an official Town of Newton “Home Based Business” form, both of which are subject to review and approval by the Planning Board.
- C) General.
 - a) Exterior of the building must not create or display any evidence of the home occupation / home based business, except a permitted sign for a home based business. Variation from the residential character and appearance is prohibited. The maximum size sign allowed shall be two square feet.
 - b) No toxic, explosive, flammable, combustible, corrosive, etiologic, radioactive, or other restricted materials that are improperly used or stored onsite.
 - c) Not more than two commercial vehicles may be kept overnight at the premises.
 - d) Adequate off-street parking must be provided and used. Provide one parking space per employee.
 - e) Home occupation/home-based business must be conducted by the resident of the premises.
 - f) There shall be no outside operations, storage, or display of materials or goods.
 - g) No process shall be utilized which is hazardous to public health, welfare, or safety.
 - h) The home occupation/home-based business must not offend by emitting smoke, dust, odor, noise, gas, fumes, lights, or refuse matter.
 - i) The home occupation/home-based business shall not involve over-night parking of commercial vehicles or trailers exceeding 12,000 GVW.

PERMITTED USES

No more than one home occupation or home-based business (per property) is permitted. Such use shall be clearly incidental and secondary to the residential use of the dwelling unit.

APPLICATION PROCEDURE

The classification of an activity as a home occupation or a home based business shall be determined by the Planning Board prior to the commencement of the activity. If the Planning Board determines that the activity is a home occupation, no further Town approval is required. If the Planning Board determines that the activity is a home based business, a conditional use permit shall be obtained in accordance with the procedures set forth in the relevant sections of the Site Plan Review Regulations of the Newton Planning Board. The conditional use permit for a home based business expires upon transfer of ownership of the affected property.

ENFORCEMENT

This section shall be administered by the Board of Selectmen. Any person who violates the provisions of this section shall be fined \$100 for each offense. Each day that a violation is continued shall constitute a separate offense. An action may be brought about under this provision after the alleged offender has been given at least seven (7) days notice from the Selectmen by certified mail, return receipt requested, that a violation exists.

SECTION XIII ACCESSORY APARTMENTS (Added March 2001, amended March 2012)

Pursuant to RSA 674:21, the Planning Board is hereby authorized to grant a Conditional Use Permit to allow for accessory apartments within the Residential A Zone in accordance with the restrictions and requirements of this section.

To increase housing alternatives while maintaining neighborhood aesthetics and quality, an accessory apartment within a detached single family dwelling shall be permitted in the Residential A Zone.

1. Maximum of one (1) accessory apartment per property.
2. The property owner must occupy one (1) of the two (2) units.
3. Only one (1) bedroom is permitted in the accessory apartment.
4. Not more than two (2) people shall occupy said apartment.
5. Off street parking sufficient for both units must be provided (space for a minimum of four (4) vehicles).
6. The structure and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the existing single family dwelling.
7. The septic system shall be adequate for both units, per New Hampshire Water Supply and Pollution Control Standards.
8. The accessory apartment must be attached to the primary dwelling unit. Accessory apartments are not permitted in detached accessory structures on the same lot. (for exceptions see #17)
9. The accessory apartment shall have convenient and direct access to the primary dwelling unit (a connecting inside door) AND its own separate entrance/exit.
10. Appearance shall remain that of a single-family residence. New entrances shall be located on the side or rear of the building.
11. The size of the accessory apartment shall be a maximum of 800 SF, or 1/3 of the total gross floor area, whichever is smaller. (Amended March 2007)
12. The primary dwelling unit and the accessory apartment shall share common utilities including well, septic system, heating and electrical service.
13. Design of the accessory apartment shall be such that it would be readily adaptable to conversion into part of the primary dwelling.

14. Design, construction and all necessary permits for the accessory apartment shall be in accordance with the Town of Newton Building Code and Safety Ordinance.
15. An accessory apartment occupancy permit will have to be obtained and shall be revoked if all of these conditions are not maintained.
16. Any appeal of this ordinance shall be made to the Superior Court.
17. Accessory apartments shall be allowed in a detached accessory structure which is in existence prior to the adoption of this ordinance provided the following conditions are found to exist:
 - A. The existing detached accessory structure consists of at least 500 square feet of floor space;
 - B. No net increase in building footprint or floor space shall be allowed; and
 - C. Minimal structural modifications of the accessory structure are required to facilitate residential occupancy as determined by the Building Inspector.

Existing accessory structures are exempt from conditions 8, 9 and 13 provided all other conditions are met.

18. In accordance with RSA 676:17, a fine of \$275.00 per day shall be assessed for violations of this ordinance.